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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

E2

FILE:

Office: PHILADELPHIA, PA

Date:

JUN 15 2004

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 303 of the Immigration and Nationality Act; 8 U.S.C. § 1403.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Interim District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on May 16, 1978, in Panama. The applicant's father [REDACTED] was born in Detroit, Michigan, on June 24, 1957, and he is a United States (U.S.) citizen. The applicant's mother [REDACTED] was born in Panama on October 31, 1952. She is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 303 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1403, based on the claim that he acquired U.S. citizenship at birth through his father.<sup>1</sup>

In a decision dated July 9, 2003, the interim district director (IDD) notes that the applicant had previously filed an N-600 Application for a Certificate of Citizenship (N-600 Application) that was denied on May 22, 2002. The IDD noted further that she considered the second N-600 application filed by the applicant (dated March 2003) to be a motion to reopen the May 22, 2002, IDD decision.<sup>2</sup> The IDD found that, although new birth certificate evidence established that the applicant's father was a U.S. citizen at the time of the applicant's birth, the applicant had not provided evidence to establish that his father was employed by the U.S. government in Panama at the time of his birth, as required by section 303 of the Act. Accordingly, the IDD found that the applicant had abandoned his motion to reopen in this regard. The IDD found further that the applicant had again failed to establish that he was legitimated by his father as required by section 309 of the Act, or that his father resided in the U.S. for the requisite time period set forth in section 301 of the Act. The application was denied accordingly.

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<sup>1</sup> The AAO notes that the applicant was placed into removal proceedings in January 1999, and that he was ordered removed by an immigration court judge on November 30, 1999. The Immigration Judge decision indicated that:

The respondent stated to the Court that his father is a United States citizen who was born here and then served in Panama. That may make the respondent a United States citizen and the Court gave the respondent an adjournment for the purposes of bringing proof of his father's United States citizenship. The respondent has failed to do so and the Court believes that in the absence of any documentary evidence of the respondent's citizenship, it must conclude that the respondent is not a citizen . . . .

The applicant filed an appeal of his removal order with the Board of Immigration Appeals (Board) on December 20, 1999, asserting, in pertinent part, that he was a U.S. citizen pursuant to sections 301 and 303 of the Act due to his birth in Panama, his father's alleged U.S. citizenship and his father's alleged military service in Panama at the time of the applicant's birth. On July 24, 2000, the Board rendered a decision in the applicant's case finding, in pertinent part that the applicant had failed to provide proof of his U.S. citizenship status, and affirming the Immigration Judge's decision. The record contains no indication that a motion to reopen or reconsider the Board's decision was filed, and it appears that the applicant is presently under a final order of removal.

<sup>2</sup> The AAO finds that the applicant's second N-600 application should more properly have been treated as a new application for a certificate of citizenship rather than as a motion to reopen his previous May 2002 application.

On August 18, 2003, the applicant, through counsel, filed a notice to appeal the July 2003, IDD decision before the AAO. On appeal, counsel submitted copies of the applicant's father's U.S. birth certificate as well as copies of U.S. military service documents reflecting that the applicant's father served in Panama between 1977 and 1981. Counsel additionally submitted affidavits from the applicant's mother and father, stating that the applicant's father had served in the U.S. military in Panama immediately prior to the applicant's birth in 1978. Counsel also submitted physical presence documentation reflecting that the applicant's father attended school in the U.S. from 1971 through 1976, and that he joined the U.S. military in 1977.

Section 303(b) of the Act states:

(b) Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

Citizenship and Immigration Services (CIS) Interpretation 303.1 states, in pertinent part that:

(a) [T]he Republic of Panama leased the Canal Zone in perpetuity to the United States by treaty ratified February 26, 1904. The first legislative enactment of August 4, 1937, conferred United States citizenship, as of such date, on all persons born in the Canal Zone, after February 25, 1904, and before the 1937 date, whose fathers, mothers, or both were United States citizens at the time of such persons' birth. By the same act, persons born on or after the 1937 date, under the same conditions of parentage, were declared to have similar status at birth.

Under the Act of October 14, 1940, and the section under discussion, comparable provisions bestow citizenship under identical conditions whether the person was born before or after the effective dates of the respective statutes.

....

(b)(2) Persons born out of wedlock. Current section 303(b) makes no distinction between persons born in or out of wedlock, and the related legislative history is silent as to whether Congress did or did not intend such a distinction to be drawn. Admittedly, current section 101(c)(1) defines the term "child" for purposes of Title III of the Act, and specifies the circumstances under which one who is born illegitimate may be regarded as a "child" for such purposes. However, since the section is definitive of the precisely stated term "child," the Service takes the position that it applies only to those sections of Title III in which the word "child" actually appears, and not to other sections containing different terms which may be factually inclusive of a child. Accordingly, while current section 303(b) is a part of Title III, section 101(c)(1) has no application to it, since one who may acquire citizenship under section 303(b) is designated therein as a "person" and not as a "child."

The record in the present case contains a copy of the applicant's birth certificate reflecting that he was born in Colon, Panama, on May 16, 1978, and that his father is [REDACTED] (Mr. [REDACTED]). The record additionally contains a copy of [REDACTED] birth certificate reflecting that he was born in Detroit, Michigan on

June 24, 1957, and that he is a U.S. citizen. The record also contains copies of military records reflecting that Mr. [REDACTED] served in the U.S. Army from 1977 through 2003, and that he was based in Panama between June 1977 and February 1979. In addition, the record contains affidavits from Mr. [REDACTED] and the applicant's mother stating that Mr. [REDACTED] served with the U.S. military in the Panama Canal Zone between 1977 and 1979, and that he is the applicant's father.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant has submitted sufficient proof on appeal to establish by a preponderance of the evidence, that he meets the requirements for U.S. citizenship under section 303 of the Act. The appeal will be sustained accordingly.

**ORDER:** The appeal is sustained.